

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition of US Telecom for Declaratory)	WC Docket No. 13-3
Ruling that Incumbent Local Exchange)	
Carriers are Non-Dominant in the)	
Provision of Switched Access Services)	

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”), pursuant to the Public Notice released on January 9, 2013 (DA 13-21), hereby respectfully submits its comments on the above-captioned Petition for Declaratory Ruling filed by USTelecom on December 19, 2012.

In its petition, USTelecom requests that the Commission declare that incumbent LECs are no longer presumptively dominant in the provision of interstate mass market and enterprise switched access services. USTelecom appears to be requesting the following relief for incumbent LECs: removal of price cap and rate-of-return regulations; reduction of tariff filing obligations (cost support and notice requirements); reduction of the discontinuance waiting periods from 60 to 30 days; and granting presumptive streamlined treatment for transfers of control under section 214.¹ The declaration of incumbent LECs’ non-dominance would be on a nationwide and generic, rather than a case-by-case, basis.² The bulk of USTelecom’s petition is devoted to describing incumbent LECs’ declining share of end user customers, as more consumers “cut the cord” and become wireless-only subscribers, or switch to VoIP or cable service providers. This petition should be denied, for several reasons.

¹ Petition, pp. 9-10.

² *Id.*, pp. 10-11.

First, USTelecom's focus on wireless and VoIP substitution is not on point with its request for deregulation of incumbent LECs' switched access charge services. USTelecom's petition emphasizes that incumbent LECs have lost end user customers (as measured by the number of access lines) to wireless, VoIP, and cable service providers. This is not the same thing as being non-dominant in the provision of switched access services. The terminating LEC has an access monopoly for the completion of calls to its end user subscribers, and the largest incumbent LECs are certainly dominant in the provision of access transport (which is not provided over the incumbent LEC's local loop) to competitive carriers. If the incumbent LECs feel they need greater freedom to compete to retain or gain end users, then it would seem more appropriate to seek relief of existing retail rate (local service) regulation, rather than deregulation of their provision of switched access services. For example, it is not clear why removing price, tariff, or Section 214 regulations from their switched access services would encourage end users to keep their wireline local service, or to place interexchange calls from their wireline rather than from their mobile phone.

Second, it is misleading, particularly in the case of the RBOCs, to consider the situation of an incumbent LEC without regard to its affiliates and to the corporation's position in the telecommunications market as a whole. AT&T and Verizon are not only the two largest incumbent LECs in the country, but also the two largest wireless service providers. Both of these carriers have tens of thousands of wholesale customers, and millions of broadband (UVerse and FIOS) subscribers. Verizon has entered into joint marketing agreements and has agreed to create a joint innovation lab with several major

cable companies.³ The combined heft of these affiliations and other business arrangements in the broad telecommunications market generates enormous benefits, from volume discounts on equipment to brand name recognition to attractive intra-company transfer pricing. When all of their customers are counted,⁴ and when intra-corporate affiliations and inter-company joint marketing agreements are considered, incumbent LEC claims of nondominance are far less compelling, and incumbent LEC complaints about the regulatory disadvantages under which they claim to be laboring are far less significant.

Third, USTelecom's petition ignores the many regulatory advantages enjoyed by incumbent LECs. Assuming *arguendo* that all incumbent LECs are non-dominant as claimed in this petition, a level playing field involves not just a leveling of regulatory obligations, but also the elimination of disproportionate regulatory benefits. While USTelecom makes much of the regulatory burdens imposed on incumbent LECs, its petition is silent about the tremendous benefits bestowed upon incumbent LECs – benefits which the incumbent LECs do not propose to forego. For example, in 2012, incumbent LECs received \$2.9 billion in legacy high-cost USF subsidies (75% of all high-cost support distributed).⁵ Incumbent price cap LECs have exclusive right for up to 5 years for Connect America Fund (CAF) Phase I subsidies,⁶ and have right of first

³ See, e.g., “2012 Year in Review: Verizon Teams Up with Major Cable MSOs,” available at <http://www.fiercecable.com/special-reports/2012-year-review-verizon-teams-major-cable-msos>.

⁴ See Sprint comments filed in GN Docket No. 12-353, AT&T and NTCA TDM-to-IP Voice Transition Petitions, pp. 12-14 (Jan. 28, 2013) (RBOCs control an estimated 53% of total voice subscribers).

⁵ See USAC Form HC01.

⁶ Year 1 CAF Phase I support was \$300 million. Until the CAF Phase II program is operational, price cap LECs can get up to \$1.8 billion per year in CAF Phase I support for years 2-5.

refusal to receive \$1.8 billion per year in CAF Phase II support for at least 5 years. Rate of return LECs have \$2 billion per year in CAF support, which includes a recovery mechanism (with annual true-ups to ensure CAF recovery in the event of faster-than expected declines in demand) to help insulate them against the effect of the new, economically more efficient, intercarrier compensation regime.⁷

In contrast, the CAF Mobility Fund Phase II totals \$500 million per year, \$100 million of which is earmarked for Tribal areas, and competitive carriers' legacy USF support has either been completely eliminated (in the case of Sprint and Verizon Wireless), or is being phased out over a 5-year period beginning July 1, 2012.⁸ And, while USTelecom bemoans the burdens associated with the access charge tariff regime, wireless carriers are not even allowed to tariff access charges or to assess such charges without the other carrier's consent, even though the access functions CMRS carriers perform are the same as the access functions performed by an incumbent LEC.

In the event that the Commission does grant USTelecom's petition, any regulatory relief given to incumbent LECs must be balanced with a reduction in their disproportionate regulatory advantages, including an accelerated phase-out of their legacy high-cost support and the ICC-replacement CAF support (which phases out in 3 years beginning in 2017 for price cap carriers but has no sunset date for rate-of-return LECs);⁹

⁷ Baseline revenues, on which rate of return LECs' USF recovery mechanism is based, are to be decreased by a modest 5% per year. *See Connect America Fund, et al.*, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*"), para. 39.

⁸ *USF/ICC Transformation Order* at para. 513.

⁹ *Id.*, para. 920. As the Commission has explained, and the courts have agreed, "the purpose of universal service is to benefit the customer, not the carrier." That is, while section 254 directs the Commission to provide support that is sufficient to achieve universal service goals, that obligation does not create any entitlement or expectation that ETCs will receive any particular level of support or even any support at all." (*Id.* at para. 221, footnote omitted). *See id.*, para. 293 ("...there is no statutory provision or

elimination of their exclusive eligibility for certain CAF subsidies; elimination of their right of first refusal for other CAF subsidies; equalization of broadband USF subsidies available to classes of carriers (incumbent LECs and mobile carriers) (*i.e.*, by reducing the overall USF funding burden); and elimination of incumbent LECs' right to unilaterally impose access charges through tariffs.¹⁰ Incumbent LECs that are granted the relief requested by USTelecom should also be required to exchange traffic at efficient, competitively neutral locations (rather than at incumbent LEC tandems and end offices).

Respectfully submitted,

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Commission rule that provides companies with a vested right to continued receipt of support at current levels...").

¹⁰ Instead, like CMRS carriers, incumbent LECs would be "free to arrange whatever compensation arrangements they like [with other carriers] for the exchange of traffic" through contracts rather than tariffs (*see Petitions of Sprint PCS and AT&T for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, *Declaratory Ruling* released July 3, 2002, para. 7). Of course, no matter what compensation arrangements are made, incumbent LECs would remain subject to the Section 201 obligation to provide service at just and reasonable rates, terms and conditions, and to the Section 202 prohibition against unjust and unreasonable discrimination.